

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
VLAD LYUBOVNY p/k/a "DJ VLAD,"

Plaintiff,

-against-

WILLIAM LEONARD ROBERTS II p/k/a "RICK ROSS,"

Defendant.
----- X

: 08 Civ. 7252 (PGG)

:
: **DECLARATION OF BRIAN**
: **D. CAPLAN IN**
: **OPPOSITION TO**
: **DEFENDANT'S MOTION**
: **TO QUASH SERVICE,**
: **MOTION TO DISMISS,**
: **AND MOTION TO**
: **CHANGE VENUE**

I, Brian D. Caplan, hereby declare, under penalties of perjury, pursuant to 28 U.S.C. 1746, as follows:

1. I am a member of the law firm Caplan & Ross, LLP, attorneys for Plaintiff Vlad Lyubovny ("Plaintiff") in this action. I submit this Declaration in Opposition to Defendant's Motion to Quash Service based upon Defendant's assertion that he has not been properly served. Defendant has withdrawn those aspects of his motion otherwise challenging jurisdiction and venue. See Stipulation dated November 20, 2008, annexed hereto as Exhibit 1.

Underlying Facts of Plaintiff's Claim and Service of the Complaint

2. Plaintiff, a resident and citizen of the State of New Jersey who maintains his principal place of business in New York, has served as a radio disc jockey, produced major television shows, directed motion pictures, has interviewed numerous performers and recording industry professionals, and has run a hip hop web site, which can be found at Vladtv.com. See, Complaint ¶¶ 6-8. A copy of the Complaint is annexed hereto as Exhibit 2.

3. Defendant William Leonard Roberts II, p/k/a “Rick Ross” (“Defendant”) is a recording artist and performer, and upon information and belief, a resident and citizen of the State of Florida. Since 2006, Defendant has released approximately 2 albums and sold over 1 million records. Defendant’s latest album, “Trilla,” was released in March 2008 and has sold over 500,000 copies to date. Compl. ¶¶ 12-14.

4. During the spring and summer of 2008, Plaintiff, in the course of his professional journalistic activities, reported upon and covered an investigation into Defendant’s past as a correctional officer.

5. As more fully set forth in the Complaint, as retaliation for Plaintiff’s coverage on his hip hop web site of the investigation into Defendant’s past as a correctional officer, on August 10, 2008, Defendant lured Plaintiff to the Hilton Hotel in Houston, Texas, and directed his accomplices to brutally assault, batter and strike Plaintiff, about his head and body, severely injuring Plaintiff. Compl. ¶¶ 17-32.

6. On August 15, 2008, this action was commenced.

7. By letter dated August 19, 2008, I wrote to Defendant’s transactional attorney, Theodor Sedlmayr, advising him that this action had been brought, and requesting that he advise me as to whom Defendant had retained to represent him in this action. While I had one telephone conversation with Mr. Sedlmayr concerning my client’s claims against Defendant, he did not otherwise respond to that letter. A copy of the letter is annexed hereto as Exhibit 3.

8. On August 30, 2008, Defendant was personally served with the summons and complaint in this action at a concert venue in Michigan where he had performed that night. A copy of the process server’s sworn Affidavit of Service is annexed hereto as Exhibit 4. My partner, Jonathan Ross, then sent Mr. Sedlmayr a follow up letter dated September 25, 2008, advising him

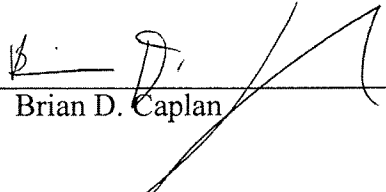
that Defendant had been served, and reiterating our request to be advised as to who would be representing Defendant in this action. Mr. Sedlmayr did not respond. A copy of this letter is annexed hereto as Exhibit 5.

9. While Defendant now offers a bare denial of service, his motion does not dispute that he did in fact perform at the concert venue that night. Defendant also does not dispute that he matches the description contained in the process server's Affidavit.

10. Finally, it is worth noting that Defendant admits that Mr. Sedlmayr told him about this case months ago, see Motion, ¶ 7, and therefore it is evident that Defendant has been provided fair notice of the commencement of this action. Under such circumstances, his mere denial of service, without more, is wholly inadequate to rebut the process server's sworn Affidavit. At best, his denial warrants an evidentiary hearing to resolve the service issue.

WHEREFORE, it is respectfully requested that Defendant's Motion be denied in its entirety and Defendant ordered to Answer the Complaint, or, alternatively, that an evidentiary hearing be scheduled to address the service issue.

Dated: November 21, 2008
New York, New York



Brian D. Caplan

Exhibit 1

NOV-20-2008 10:41 From:

To: 13053721473

Page: 3/3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
VLAD LYUBOVNY p/k/a "DJ VLAD,"

Plaintiff,

-against-

WILLIAM LEONARD ROBERTS II p/k/a "RICK ROSS,"

Defendant.
----- X

08 Civ. 7252 (PGG)

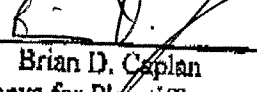
STIPULATION

IT IS HEREBY STIPULATED AND AGREED by the undersigned counsel for the parties as follows:

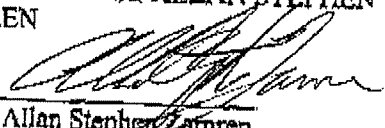
1. Defendant hereby withdraws his motion to change venue and his motion to dismiss due to lack of personal jurisdiction predicated upon insufficient contacts with the State of New York.
2. Defendant will proceed with his motion to quash service of process and his motion to dismiss based upon failure to properly serve the complaint.

Dated: New York, New York
November 20, 2008

CAPLAN & ROSS, LLP

By: 
Brian D. Caplan
Attorneys for Plaintiff
100 Park Avenue, 18th Floor
New York, New York 10017
(212) 973-2376

LAW OFFICES OF ALLAN STEPHEN
ZAMREN

By: 
Allan Stephen Zamren
Attorneys for Defendant
44 West Flagler Street, Suite 2225
Miami, Florida 33130
(305) 372-9912

SO ORDERED:

HONORABLE PAUL G. GARDEPHE
UNITED STATES DISTRICT JUDGE

Exhibit 2

JUDGE GARDEPHE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

'08 CIV 7252
08 Civ. ()

----- x
VLAD LYUBOVNY p/k/a "DJ VLAD,"

Plaintiff,

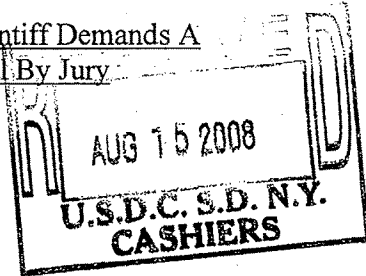
-against-

WILLIAM LEONARD ROBERTS II p/k/a "RICK ROSS,"

Defendant.
----- x

COMPLAINT

Plaintiff Demands A
Trial By Jury



Plaintiff Vlad Lyubovny, p/k/a "DJ Vlad," by his attorneys Caplan & Ross, LLP for his complaint against the defendant herein alleges as follows:

NATURE OF ACTION

1. This is an action to redress a brutal attack upon DJ Vlad engineered by Rick Ross (a platinum rap recording artist) with the purpose and intent to stifle his journalistic reporting and freedom of expression. Rick Ross, who painstakingly created his public persona to be that of a major drug dealer and "gangster," in reality is a former correctional officer. DJ Vlad, an established and respected member of the music community, hosts a hip-hop news website which commented upon these facts. With calculated planning, Rick Ross lured DJ Vlad to a meeting for the purpose of obtaining retribution. At that meeting, Rick Ross' entourage of thugs carried out Rick Ross' wishes in his presence and severely beat DJ Vlad causing permanent bodily injury. As a result, plaintiff DJ Vlad seeks two million (\$2,000,000) dollars in compensatory damages and significant punitive damages to deter further similar conduct by Rick Ross.

2. Plaintiff Vlad Lyubovny, popularly known as "DJ Vlad," is a resident and citizen of the State of New Jersey who maintains his principle place of business in New York City.

3. Upon information and belief, Defendant William Leonard Roberts II, popularly known as "Rick Ross" (hereinafter "Ross") (derived from the name of infamous drug trafficker "Freeway Ricky Ross" to whom he has no connection), is a resident and a citizen of the State of Florida and regularly transacts business within the State of New York.

JURISDICTION AND VENUE

4. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), in that diversity of citizenship exists between plaintiff and defendant and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

5. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(a)(3) in that defendant is subject to jurisdiction within the Southern District of New York.

BACKGROUND

6. DJ Vlad has been involved in the music industry for over 8 years. Among other things, he has served as a radio disc jockey, produced major television shows, directed motion pictures and has run a Hip-Hop news website.

7. Over the years, DJ Vlad has interviewed numerous music industry performers, producers and record company officials for radio, television, documentaries and the internet.

8. Vladtv.com is a Hip-Hop internet news site which was formed in 2006 and has served as a forum for commentary on developments in the urban music community for over 2 years.

9. DJ Vlad maintains an office in New York City to run Vladtv.com and to interview music industry artists. DJ Vlad conducts 2 to 4 interviews per week at his New York City office.

Portions of the interviews are placed on the Vladtv website weekly. Vladtv.com receives approximately 1 million views per week.

10. DJ Vlad has attended numerous music industry functions as a member of the press.

11. Based upon DJ Vlad's entertainment industry related activities, he has grown to become an established and well-respected member of the music community.

12. Ross has been a recording artist and performer in the music industry since approximately 2006.

13. During that time frame, he has released approximately 2 albums on the Slip N Slide label and sold over 1 million records.

14. Ross' latest album, "Trilla," was released in March 2008 and has sold over 500,000 copies.

15. Ross' records are distributed by Def Jam Records, located in New York City.

16. Upon information and belief, Ross has earned significant revenue in the State of New York by reason of, among other things, his record sales.

17. As part of Ross' public persona, Ross has represented himself in interviews through the media (T.V., radio, magazines and newspapers) to have been a former drug dealer in order to bolster his "tough guy" image.

18. During 2008, rumors began to circulate that Ross was, in fact, a former correctional officer, which was inconsistent with the persona that Ross had created for himself.

19. In reporting and commentating on these events, from July 2008 onward, DJ Vlad covered the ongoing investigation into Ross' past on Vladtv.com. Among the clips aired on the website was one in which Ross was shown in a correctional officer's uniform.

20. On August 10, 2008, DJ Vlad was in Houston Texas in order to attend the Ozone Awards, a music industry function honoring hip hop artists.

21. DJ Vlad attended the Ozone Awards in his capacity as a journalist and was given a press pass by the sponsors of the event.

22. On August 10, 2008, during the early afternoon, Ross sent a text message to DJ Vlad that stated as follows:

“Niggas will learn...trillaaaa”

23. Ross had been interviewed by DJ Vlad on at least 2 prior occasions and was familiar with DJ Vlad’s contact information.

24. DJ Vlad responded to Ross’ text message with a text message stating:

“Who’s this?” as he did not know who had sent the message.

25. Ross, in turn, text messaged DJ Vlad:

“Ross..im hearing things”

26. DJ Vlad responded:

“What’s up?”

27. Following DJ Vlad’s second responsive text message, Ross called DJ Vlad and told him, among others things, the following:

“I’ve been hearing things about me on your website.”

We gonna make a story.

We going to see each other.

We going to talk.

Where are you?”

28. During Ross' conversation with DJ Vlad, Ross learned that both he and DJ Vlad were in Houston to attend the Ozone Awards and Ross told DJ Vlad he would call him and tell him where he wanted to meet. DJ Vlad told Ross that he would be happy to meet him and discuss with him any concerns that Ross had.

29. Later, on August 10, 2008, Ross called DJ Vlad and told him where and when to meet him.

30. Shortly thereafter, on the second floor of the Hilton Hotel in Houston, Texas, DJ Vlad met Ross, who was accompanied by at least 4 others (hereinafter "Ross' Accomplices").

31. Following a brief conversation between DJ Vlad and Ross in which Ross said, "We got beef," Ross' Accomplices, who had surrounded DJ Vlad while he spoke with Ross, proceeded to strike and beat DJ Vlad in Ross' presence and without any protest on Ross' part.

32. Ross and Ross' Accomplices fled the scene together, while DJ Vlad lay on the ground bleeding profusely, during which time one of his attackers stated, "Yeah mother fucker, that's what you get."

FIRST CLAIM

33. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 32 hereof as if fully set forth herein at length.

34. On August 10, 2008, while DJ Vlad was lawfully at the Ozone Awards, hosted at the Hilton hotel in Houston, Texas, Defendant Ross and Ross' Accomplices, acting upon the direction and behest of Ross, without just cause or provocation, did intentionally, willfully, maliciously and unjustifiably, brutally assault, batter and strike Plaintiff, about his head and body, causing serious personal injuries.

35. That as a result of the foregoing, Plaintiff was severely injured about the head, body and limbs, was caused to suffer severe shock to his nervous system; was caused to suffer and still continues to suffer great physical pain, mental anguish and bodily injuries. Plaintiff's injuries include, but are not limited to, 7 stitches near his eye, a corneal abrasion, 3 fractures in his face and possible permanent nerve damage.

36. Upon information and belief, Ross has threatened to assault and/ or assaulted other individuals prior to August 10, 2008.

37. That by reason of the foregoing, Plaintiff has been damaged in the sum of \$2,000,000 dollars, and is entitled to an award of punitive damages in the sum of \$2,000,000 dollars.

WHEREFORE, Plaintiff demands judgment against Defendant Ross as follows:

1. On the First Cause of Action, compensatory damages in the sum of \$2,000,000 dollars, plus punitive damages in the sum of \$2,000,000 dollars.
2. The costs and disbursements of this action, and;
3. Such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 15, 2008

CAPLAN & ROSS, LLP

By: 

Brian D. Caplan (BC-1713)

Jonathan J. Ross (JR-0581)

Attorneys for Plaintiff

100 Park Avenue, 18th Floor

New York, New York 10017

(212) 973-2376

Exhibit 3

CAPLAN & ROSS, LLP

Brian D. Caplan
Jonathan J. Ross

100 PARK AVENUE, 18TH FLOOR
NEW YORK, NEW YORK 10017

TEL: 212.973.2376
FAX: 212.661.4290

www.caplanross.com

Nicole L. Mondschein †

OF COUNSEL
Joseph Einstein

† Also admitted in Florida

Brian D. Caplan
Direct: 212.973.2377
bcaplan@caplanross.com

August 19, 2008

VIA FAX: (212) 925-0554

Theodore Sedlmayer, Esq.
Sedlmayer & Associates
200 Park Avenue South
New York, NY 10003

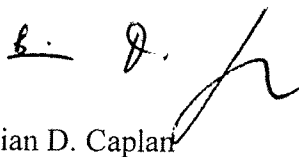
**Re: Vlad Lyubovny v. William Leonard Roberts II p/k/a "Rick Ross" 08
Civ. 7252 (Judge Gardepha)**

Dear Mr. Sedlmayer:

We are the attorneys for Vlad Lyubovny, p/k/a DJ Vlad, the plaintiff in the above action against Rick Ross. We understand that you are Rick Ross' transactional attorney. Please let us know when and whom your client retains as a lawyer to defend him in this action. In the interim, please be so kind as to advise your client that he is obligated to preserve any evidence that comes into his possession relating to the alleged assault on August 10 which is the subject of the above action. We are informed that a number of amateur and professional videographers are peddling videotapes of the incident. Should Rick Ross, or any persons acting on his behalf, acquire the same please instruct him not to destroy such material.

Thank you for your anticipated cooperation.

Sincerely yours,


Brian D. Caplan

Message Confirmation Report

Date/Time : AUG-19-2008 16:49 TUE
 Fax Number :
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CAPLAN & ROSS, LLP

100 Park Avenue, 18th Floor
 New York, New York 10017-5561

Tel: 212.973.2376

Fax: 212.661.4290

RECIPIENT	COMPANY	FAX NO.	PHONE NO.
Theodore Sedlmayer, Esq.	Sedlmayer & Associates	212.925.0554	

FROM: Bijan Caplan	DATE: August 19, 2008
PHONE: (212) 973-2377	CLIENT/MATTER #: Vlad Lyubovny

Total number of pages including this page: 2.
 If you do not receive all the pages, please call 212.973.2376

ATTENTION:

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE. MY NUMBER IS (212) 973-2376.
 PLEASE FORWARD THE ATTACHED TO THE APPROPRIATE PERSON IN YOUR FIRM AS SOON AS POSSIBLE.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY-CLIENT PRIVILEGED AND/OR OTHERWISE CONFIDENTIAL. INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE.

Exhibit 4

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE <u>8/30/08</u> <u>8:35pm</u>	
NAME OF SERVER (PRINT) <u>Johnathan P. Ware</u>	TITLE <u>Process Server</u>	
Check one box below to indicate appropriate method of service.		
<input checked="" type="checkbox"/> Served personally upon the defendant. Place where served: <u>Freedom Hill</u> <div style="text-align: right; margin-right: 50px;"><u>sterling high, MI</u></div>		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____		
<input type="checkbox"/> Returned unexecuted: _____		
<input checked="" type="checkbox"/> Other (specify): <u>personally delivered upon William Leonard Roberts II</u> <u>P/K/A Rick Ross 6'11" 280lbs - 300lbs African American</u> <u>I AM FAMILIAR WITH RICK ROSS AS I AM A FAN OF HIS!</u>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL \$0.00
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on <u>8/30/08</u> <div style="text-align: center; font-size: small;">Date</div>	<u>Johnathan P. Ware</u> <div style="text-align: center; font-size: small;">Signature of Server</div>	
<u>25140 Lakser Rd #C141 Southfield, MI</u> <div style="text-align: center; font-size: small;">Address of Server</div> <div style="text-align: right; margin-top: 10px;"><u>48033</u></div>		

APPROX
30-3
YES

(1) AS to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Exhibit 5

CAPLAN & ROSS, LLP

Brian D. Caplan
Jonathan J. Ross

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NEW YORK, NEW YORK 10017

TEL: 212.973.2376
FAX: 212.661.4290

www.caplanross.com

Nicole L. Mondschein †

OF COUNSEL

Joseph Einstein

† Also admitted in Florida

Jonathan J. Ross
Direct: 212.973.2378
jross@caplanross.com

September 25, 2008

VIA FIRST CLASS MAIL

Theodore Sedlmayr, Esq.
Sedlmayr & Associates
200 Park Avenue South
New York, NY 10003

RE: Vlad Lyubovny v. William Leonard Roberts II p/k/a "Rick Ross"
08 Civ. 7252 (Judge Gardephe)

Dear Mr. Sedlmayr:

As you know, we are attorneys for plaintiff in the action referenced above. I understand that you are Rick Ross' transactional attorney. Since your prior conversation regarding this action with Brian Caplan, personal service of the summons and complaint upon Mr. Ross occurred on August 30, 2008 at his concert performance at the Freedom Hill Amphitheatre in Michigan that night. The Court has now scheduled a November 10 conference date in the action, and I enclose a copy of the Notice of Pre-Trial conference issued by the Court and a copy of the Judge's individual Rules of Practice. Please note that we continue to await your advice as to whom your client has retained to represent him in this action, as previously requested in Mr. Caplan's August 19, 2008 letter to you.

Sincerely,



Jonathan J. Ross

Enclosure

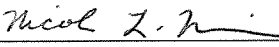
cc: Honorable Paul G. Gardephe, U.S.D.J.

CERTIFICATE OF SERVICE

I, Nicole L. Mondschein, hereby certify that on November 21, 2008, I caused to be served a true and correct copy of the within Declaration of Brian D. Caplan in Opposition to Defendant's Limited Appearance, Motion to Quash Service, Motion to Dismiss, and Motion to Change Venue, and Exhibits, by First Class Mail, upon the following:

Allan Stephen Zamren, Esq.
44 West Flagler Street
Suite 2225
Miami, Florida 33130
Attorney for Defendant

Dated: November 21, 2008
New York, New York



Nicole L. Mondschein (NM 5610)